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Paper No. 6

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OFFICE OF PETITIONS

In re Application of :
Hatton et al. : LETTER
Application No. 10/032,403 : AND
Filed: December 20, 2001 : NOTICE OF ABANDONMENT
Attorney Docket No. P32162C1 :
:

A petition under 37 CFR 1.47(a) was received in the United States Patent and Trademark Office (Office) on October 16, 2002 (certificate of mailing date October 11, 2002).

A review of the application file reveals that on June 11, 2002, the Office mailed a Notice to File Missing Parts of Nonprovisional Application to petitioner, which set forth an extendable two (2) month period to submit the required payment of a \$130.00 surcharge under 37 CFR 1.16(e), an executed oath or declaration, and an abstract beginning on a separate sheet.

On October 16, 2002 (certificate of mailing date October 11, 2002), a petition for a two month extension of time and authorization to charge the required fee, a declaration signed by one of the two joint inventors, authorization to charge the surcharge and Rule 47 petition fee, and the instant Rule 47 petition were filed.

Although petitioner filed a petition under 37 CFR 1.47(a) on October 16, 2002 (certificate of mailing date October 11, 2002), petitioner was not relieved of the requirement to submit a timely reply to the Notice to File Missing Parts of Application. Section 1.135(b) of the Code of Federal Regulations states, in relevant part: "Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require." Petitioner failed to file an abstract, as was and is required under 37 CFR 1.72(b).

Because petitioner failed to submit a timely and proper reply to the Notice prior to October 11, 2002, within the meaning of 37 CFR 1.135(b), **this application is properly held abandoned as of October 12, 2002.¹**

¹ Petitioner could have purchased up to 5 months in extension of time, but the last possible date to purchase a 5 month extension of time expired on 1/11/03. Therefore, the abandonment date is the day after the 2 month period for reply plus the two month extension of time.

Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and pay the proper petition fee within **ONE (1) month** of this decision before the petition under 37 CFR 1.47 may be addressed on its merits. No extensions of time are permissible. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice, a petition under 37 CFR 1.137(b) is suggested. The petition under 37 CFR 1.47 will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shrine Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosures: blank PTO/SB/64 -- Petition for Revival of an Application Abandoned
Unintentionally under 37 CFR 1.137(b)

blank PTO/SB/61 -- Petition for Revival of an Application Abandoned
Unavoidably under 37 CFR 1.137(a)

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